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ON

THE REFORM

OF THE

TESTAMENTARY JURISDICTION.

ISSUED BY THE COMMITTEE OF PROCTORS IN DOCTORS' COMMONS.

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1853.

ON

THE REFORM

OF THE

TESTAMENTARY JURISDICTION.

A CONSIDERABLE portion of the following statement has been already submitted to the attention of the public in the columns of "The Times" of the 26th March, through the great courtesy of the editor of that journal. It was not possible, however, in the space within which it was felt necessary on that occasion to restrict the observations on the Reform of the Testamentary Jurisdiction, to do full justice to the question, or furnish to the public all the information which it was entitled to expect from practitioners in Doctors' Commons, in order to the forming of a correct judgment of the probable effect of any proposed legislative measure upon the interests of the community at large. Rights of succession to personal property involve considerations which come home to every individual; and it is hardly too much to say, that there is no subject upon which, if legislation should proceed in a wrong direction, the mischief will be more deeply felt by the whole community.

The leading question undoubtedly is, whether greater advantages and conveniences of a public kind, as regards the rights of succession to personal property, will be secured by the abolition of all the existing Testamentary Courts, and the transfer of their functions and jurisdiction to other tribunals, than by their maintenance under improved regulations. But although the practitioners in Doctors' Commons are prepared to abide by the result of that issue fairly tried, it is not to be forgotten that other and material considerations are involved in the proposal to abolish *all* existing courts. It must not be overlooked, that the business of the Prerogative Court of Canterbury, which is the chief Testamentary Court of the kingdom, is conducted by a distinct branch of the legal profession, specially conversant with matters of law affecting not only the relations of the State to the Church, but the intercourse of the British Crown with foreign powers; and that the extinction of such a branch of the profession may entail consequences immediately prejudicial to some of the highest interests of the State, irrespectively of its direct connection with the High Court of Admiralty. It is not sought, on the present occasion, to maintain an argument or assign reasons from selfish motives, for the purpose of sustaining any particular interest, though the *gratuitous* ruin of a body of respectable and blameless men would do no credit to the legislature. The question is to be dealt with on other grounds and with reference to the public good. If the existing Courts of Probate are of a character to be incompatible with the progress of wholesome reform, as being either a positive evil or an obstruction to a greater good in any desired improvement in the administration of the law comprehensively, so that the removal of the tes-

tamentary jurisdiction to other courts would be a well-ascertained practical benefit to the country at large, let it be accomplished. But, should it be clear that the transfer of the testamentary jurisdiction to the Courts either of Chancery or Common Law would not only prove a most serious inconvenience to the public, without any comparative advantage, but that it would be attended with hazardous results, and be advantageous only to a small portion of the body of practitioners in those courts, there can be little doubt into which scale the weight of the Government and of the Legislature should be thrown.

That the Courts of Probate generally as they now exist are too numerous, and that they are susceptible of improvement, cannot be denied; neither would practical amendments of the jurisdiction be resisted. To the correction of any established abuse, or the introduction of any well-considered reform, no kind of objection can be made. Their proposed absorption by the Court of Chancery is another thing, to the discussion of which, entitled as it is to calm consideration, apart from personal feeling and individual interest, the following remarks will be addressed.

To the outcry that is raised against the exercise of episcopal jurisdiction in matters testamentary, an obvious answer presents itself. There needs but a change in the title of the Archbishop's Court, calling and constituting it "the Queen's Court of Probate," instead of "the Prerogative Court of Canterbury," and at once to all intents and purposes it becomes a civil tribunal. Whatever may be said of it now as an anomaly, it is not in itself attended with any practical inconvenience. The real evil, that of enforcing a

judgment in matters of a temporal nature by means of ecclesiastical censures, has long been abolished.

There is much in a name, and the "Ecclesiastical Courts," associated as they now are with suits for church-rates, brawling, and defamation, have been a convenient topic of reproach. Another subject, which has been the occasion of deserved censure, is the sinecure of the principal Registrar of the Prerogative Court of Canterbury. It is an admitted evil and abuse; but the practitioners in that Court have no part in the reproach, and the Legislature itself is responsible for its maintenance.

With a view to the consideration of the suggested expediency of transferring the testamentary jurisdiction to the Court of Chancery, it is necessary to notice briefly the various proceedings which have been had of late years, since the constitution and practice of the Testamentary Courts became the subject of legislative consideration.

Reports of Royal and Parliamentary Commissions.

In the year 1830 a Commission issued from the Crown to inquire into the practice and jurisdiction of the Ecclesiastical Courts. The result of this was a Report in the year 1832, recommending the abolition of diocesan and inferior courts, and the establishment of one court in each of the provinces of Canterbury and York.

In the year 1833 a Fourth Report of the Commission for Inquiry into the Law of England as to Real Property recommended the transfer of jurisdiction in testamentary and matrimonial causes to a court of equity. How the latter point came under its cognisance, or upon what evidence the conclusion was arrived at, does not appear.

These conflicting reports were referred to a Committee of

the House of Commons, who recommended the extinction of all the ecclesiastical courts in the kingdom, excepting that of Doctors' Commons, where they advised the establishment of a Metropolitan Court and a Central Registry, with such an extension of powers as would enable it to embrace wills of realty as well as of personalty.

The enlargement of the jurisdiction of the Court of Admiralty, which was also part of their recommendation, has since been carried into effect by act of Parliament; and two other measures have been passed, by one of which the jurisdiction of the Court of Delegates has been transferred to the Judicial Committee of the Privy Council; by the other certain rules have been prescribed for the due execution of wills.

The following measures have since been brought forward*:

1. In 1835 Lord Brougham introduced a bill having for its object to provide one testamentary court for each province.

2. In the same year the Attorney and Solicitor-General and Dr. Lushington introduced a bill for the establishment of one court only.

3. In 1836 the Lord Chancellor brought in a bill to establish one court for England and Wales, to be called "Her Majesty's Court of Probate," &c.

4. In the same year Serjeant Goulburn, Mr. Cayley, and Mr. Jervis brought in a bill, the object of which was to alter the local jurisdictions of all Ecclesiastical Courts, giving to

* A measure was brought forward by Sir William Scott, for the suppression of the manorial and peculiar jurisdictions, as early as 1812, which passed the House of Commons, but was dropped in the House of Lords.

the Prerogative Court of Canterbury exclusive jurisdiction in London and the counties around it, and assigning a limited jurisdiction to the other courts.

5. In 1843 Dr. Nicholl, Sir James Graham, and the Attorney-General brought in a bill to consolidate the testamentary jurisdiction of England in the Court of Arches.

6. In the same year Dr. Elphinstone, Mr. Stock, and Mr. Hayter brought in a bill to consolidate the Arches and Prerogative Courts.

7. In 1844 Lord Chancellor Lyndhurst brought in a bill to establish Metropolitan and Diocesan Courts throughout the kingdom, and give contentious jurisdictions to each.

8. In 1845 Lord Cottenham brought in a bill to establish one Court of Probate in London.

It will be borne in mind—

1. That each and all the bills so introduced to Parliament came to an untimely end, and,

2. That no person has ever yet so much as proposed to the Legislature for adoption a bill to deprive the existing Courts of Probate of all testamentary jurisdiction. A further Commission has been issued from the Crown, and is now sitting, the object of which is described to be "to continue the Chancery inquiry (which led to the recent changes in the practice of the Courts of Equity), and to inquire into the law and jurisdiction of the Ecclesiastical and other Courts in relation to matters testamentary."

Business of the Prerogative Court and Registry. COMMON FORM.

The object which all rational inquirers must have in view, whether Commissioners from the Crown or Committees of either House of Parliament, is the union of accuracy and security with economy and expedition in the transaction of the

important business which, under the existing administration of the Prerogative Court of Canterbury, makes so little noise.

The subject is thought by some persons to involve little more than a squabble between the practitioners in different courts, and others profess to see no great difficulty in adjusting that which has repeatedly baffled the attention of Parliament and of rival Administrations since 1832.

The testamentary business of the country has proceeded, meanwhile, without interruption, and the property of persons dying testate and intestate has been quietly and satisfactorily administered. It continues so to be; but let the system now in operation be swept away, and it is no exaggeration to say that the kingdom would be convulsed by it. The public has no idea of the nature and amount of the common form business transacted in the Prerogative Registry. Nearly 12,000 grants of probate and administration have passed its seal within the last twelve months, disposing of property * which may be estimated at about 50,000,000*l.* sterling. The stamp duties during that time gathered in to the revenue by the agency of the practitioners, without the smallest difficulty, delay, loss, or expense, have exceeded 800,000*l.*† The whole is the result of a well-organised sys-

* When it is stated that these 12,000 grants of probate and administration gave rise to only forty-five suits in the Prerogative Court, some idea may be formed of the use of the Proctors' Office, as at present regulated, in *preventing* suits.

† The late Mr. Gwynne stated, in his evidence before the Ecclesiastical Commission in 1839, not only that no case of fraud in respect to the duty on probates and administrations had ever occurred within his knowledge as Controller of the Legacy Duties in the Registry of the Prerogative Court of Canterbury, but that, from the arrangements in that office, he considered it to be impossible that any should occur.

tem, worked by competent hands, and watched by experienced eyes. If that machine were put out of work, the effect would be nothing short of what has just been described. It is a national, and not a professional question. Lawyers are not found to be the best legislators. Other skill is required for legislation than that by which rules are framed to guide the practice of a court of law. One of the greatest lawyers of modern times so little foresaw the effect of one very short and apparently simple enactment, in the preparation of which he was immediately concerned, that when the Wills Act of 1838 was under discussion in the House of Commons he confidently affirmed his belief that within a few weeks after the passing of the measure there would never again be a question as to the *factum* of any will. Yet, perhaps, there never was an act of Parliament that has caused so much perplexity, to say nothing of its cruel results in defeating the intentions of testators, and which led to a special act for its amendment being passed last session. In the course of the ten years which followed the passing of the Wills Act of 1838, there were about 3000 motions in the Prerogative Court, most of which it may be observed must, according to the forms of the Court of Chancery, have been the subject of a distinct suit, at a heavy expense, as well as with serious distress to the families interested in the distribution of the property. At every stage and step of the inquiry the observation recurs, that the public have no idea of the complicated nature of the business with which it is proposed to deal thus summarily.

ERROR IN CONFOUNDING PROBATE WITH REGISTRATION.

One of the leading errors of the Real Property Commissioners, whose recommendations are now so high in favour

with Equity practitioners, arose from their confounding probate with registration; yet there is an essential difference between them, which lies at the very root of this branch of the subject. It is the more to be regretted, because its full importance cannot be estimated without a practical acquaintance with what is passing in the Prerogative Registry, and in every proctor's office day by day.

Questions which arises before Probate.

It may be as well to put the case in one of its simplest forms for illustration.

And here it may first be observed, that a person seeking probate or administration does so on an *exparte* application, by which possession is to be obtained of the effects of a deceased party.

Suppose a will and half-a-dozen codicils to be brought for probate by two or three executors. All are in a fair form and duly executed.

What can be easier than to register and act upon them?

But on examination of the contents it may appear that by the fourth codicil the three former codicils are revoked, and that by the fifth there is a new appointment of executors.

This part of the subject is of so much importance that more may and should be added in explanation of what is so little understood.

No two things can be more distinct than proving and registering a will.

The registering is but the entry or record of an instrument correct in form, and on the face of it duly executed. For the proving of a will, however, preparatory to its registration, which is the final and formal act, it is necessary

to look to the contents also; the formality of execution according to the statute being but a small part of what is requisite.

A will must be inspected in the first instance with reference to the provisions of the Wills Act, to see if it is duly executed, regard being had to what is necessary to its validity; or, if there exists a defect in the clause of attestation, in order that it may be supplied by the affidavit of an attesting witness.

But, supposing all to be clear in form as for registration, much previous inquiry is needed before the will can be proved.

Is there an appointment of executors? and, if so, is it express, or implied, according to the tenour? In either case is it general or limited? It may be the latter in respect to property, time, country; very commonly one or the other: and there are frequently codicils altering appointments made in testamentary papers of earlier date, or revoking previous instruments in whole or in part.

Again, the executors may be, and not unfrequently are, dead, or they desire to renounce, or they decline to act, or are far away and have no agent in this country duly authorised, or their residence is unknown. What is to be done in their absence? Then arises the question as to the appointment of the residuary legatee. Is there one or more?—for life or absolute?—contingent, limited, or substituted?—how and where?—willing to act?—under what limitations entitled to the grant of administration (with the will annexed)? Or it may be that only a copy of the will (executed abroad) has been received. The necessity for a new limitation then arises. Or there is no residuary legatee named, or he is

dead, or absent, or a minor. And in the course of the will (which must be examined throughout) there may be found to occur occasionally interpolated sheets, more frequently — indeed, very commonly — erasures, interlineations, and alterations of various kinds. One among many that might be specified is found in the attempt frequently made by testators to defeat the provisions of the act by obliterating parts of the will without the formalities prescribed by the statute, and which must be accounted for.

It often happens in like manner that in the will reference is made to schedules, intended codicils, &c., which must be the subject of further inquiry.

Persons in the decline of life, women more particularly, are prone to meddle with their testamentary acts, and so create innumerable difficulties.

New cases continually arise. Many, and sometimes new, questions arise as to the property to be included in the estimate of the deceased's estate, to the value of which the executor or administrator must be sworn, and on which it is the duty of the proctor rightly to advise, as between the party on the one hand and the Government on the other, with a view to the protection of the revenue. The manner in which the stamps are provided by the proctors is not only a great convenience to the executors or administrators, but affords a security to the revenue against forgeries and fraud.

It is to be remembered, that the proctor is not merely the agent and adviser of the party, but is a recognised and responsible officer of the Court of Probate, and has a trust reposed in him in that character.

The clearing away of prior rights is often a matter of very

serious difficulty, especially as in the case of *de bonis* grants, or grants of administration of property left unadministered by deceased administrators.

There arise also questions as to the law of other countries, and the rights of parties dependent upon it, whether in relation to domicile and the validity of the instrument, or the distribution of the property according to its tenour.

Questions also arise as to the retractations of renunciations and survivorship, and the unascertained fact as to the latter.

Again, as to the wills of married women made under powers and their limitations, whether a general grant, or a limited probate, or administration with the will annexed, is to be granted.

These and other questions are objects of the proctor's care and inquiry in the first instance, that as far as possible the requisite explanations and proof by affidavit may be provided. The whole then goes before the Clerk of the Seat in the registry, who must satisfy himself that nothing has escaped the proctor's attention; and yet probably some fifteen or twenty questions arise every day on which it is necessary to take the special direction of the Deputy-Registrar of the week, and he not unfrequently must require the opinion of Counsel or refer the matter to the judge. By the care of the Deputy-Registrars many matters are disposed of in chambers which might else become the subject of a suit, the delay, if not the expense, of which would be distressing to many.

To this cursory sketch in relation to wills should be added what appertains to the estates of intestates, which again branches out into an almost infinite variety of cases, and in addition, questions arise as to the rights of parties to letters

of administration to the effects of persons deceased; and it must not be forgotten that the greatest possible caution and accuracy are required in all grants, as well of probate as of administration, from the extensive nature of the trusts and authority of which the executor or administrator becomes possessed, and the character of the property to be administered. An executor once clothed with official authority, as such, becomes the representative of all previous estates that lie in the unbroken chain; and an administrator may in like manner, though by a different process, become entitled to the possession of the unadministered property of several other estates. A mistake in respect to a devise of land may be rectified with little injury, while an erroneous grant of probate or administration puts the party into a position enabling him to dispose of stock in the Bank of England to any amount, and thus do incalculable and irreparable injury to persons without protection in the first instance or remedy afterwards.

The settling of limitations of grants is one of the most intricate and difficult parts of professional practice, and if this matter were generally understood we should hear no more about registration and probate being the same thing.*

The subject of contentious jurisdiction as exercised by the Prerogative Court is extensive, and only the more prominent points can be noticed in this limited space; but what follows

* See Evidence of Mr. Freshfield in Appendix.

Some doubts having been expressed in the House of Commons, as to the security of the Registry in Doctors' Commons from fire, the evidence of its surveyor, before the Ecclesiastical Commission, April 7, 1830, on that subject, is printed in the Appendix.

will be found to embrace nearly all that is of importance to the present consideration of the subject, in relation both to the practical grievances which are said to arise out of the defective constitution of the Court and the remedies that have been suggested for it.

The suggestions are: —

1. The expediency of having one court to grant probate of a will in common form, and to try its validity in case of opposition.

2. That the jurisdiction to grant probate of a will and carry out its provisions should be in one and the same court, which now it is not.

3. That there should be one court for all questions relating to every description of property passing under a will.

4. The possibility of conflicting decisions is to be avoided.

5. In the trial of the validity of a will, that depositions should give way to oral testimony, *vivâ voce* examinations being preferable to written evidence.

1. In regard to the first of these suggestions, it is to be observed that, as it respects personal property, the desired good is found in the Prerogative Court of Probate, as it now exists; and that as respects real and personal property conjointly, it is not found in the Court of Chancery, and it would not be found there under the proposed change by transfer or absorption.

2. For the second suggestion, it might suffice to quote a single passage from the evidence of Lord Chief Justice Tindal: —

"1381. Is there any necessary connection between the trial of the validity of a will and the trial of its construction?—No."

To this, however, may appropriately be added, that of the

late Chief Baron Alexander, an experienced equity practitioner and judge, as given to the Committee of the House of Commons:—

"I have had a long experience of the state of the law under the present circumstances — that is, one Court deciding on the validity of a will, and another construing it; but I never perceived the inconvenience of this system."

"Q. 1149.—Does it at all follow, because there is a dispute as to the validity of a will, there should be a dispute as to the construction of a will, or *vice versâ?*

"A. — Certainly not; they depend on entirely different circumstances."

3. One answer to the third suggestion in effect is the same as to No. 1., inasmuch as to try the validity of any will the Court of Chancery must have recourse to an issue and the verdict of a jury at common law. But this is not all, and herein lies one of the fallacies which pervade the Report of the Real Property Commissioners.

"All that can be required," they say, "for the convenience of an executor, and of debtors and creditors, will, as it appears to us, be effected by attributing to registration the effect of probate in common form."

But, suppose that the Court of Chancery should have, as desired, exclusive jurisdiction over the whole estate, real and personal, and that an heir, or asserted heir-at-law, or any devisee under a former will, should contest against the executor the validity of that which is sought to be proved or registered; in the person of the executor every legatee and every creditor must patiently abide the result, and that, perhaps, not of one, but of several trials. It may suffice to have named, without further enforcing, the objection;

but another brief reference will be made to it under the next head.

4. The possibility that the same instrument should be good in one court and bad in another, valid as to realty and invalid as to personalty, is still put forward as an unanswerable objection to the separate jurisdictions, in respect of probate and construction.

A single case during the whole preceding twenty-five years was all of which the Ecclesiastical Commissioners could find any trace. No instance of it could be produced by the Real Property Commissioners, whose objection must have been founded on theory.

The Report of the Ecclesiastical Commission was to this effect: —

"It is right to state that with respect to conflicting decisions between a jury and the Ecclesiastical Court, the inconvenience has been rather in theory than practice, for during the last quarter of a century we are aware of but one single instance in which a jury has found a verdict in opposition to the Prerogative of Canterbury."

But with conflicting verdicts every one is familiar, and there is no remedy for them. Not only can there be no appeal from a verdict, as from a doubtful decision of the Prerogative Court, but there may be as many distinct issues and verdicts as there are estates devised in the will, which may be good and bad, valid and invalid, in alternate counties throughout the realm.*

There is another proceeding in testamentary matters — so reported the Ecclesiastical Commissioners — extremely useful and frequently resorted to, which it may be proper here to state.

* See Evidence of Chief Baron Alexander in Appendix.

"The executor or other person claiming to take the grant of probate of a will or other testamentary instrument, may cite the next of kin and other parties interested under an intestacy, or a former will, to appear and see the will propounded and proved by witnesses; and if the parties do not appear and oppose the probate, they are barred from afterwards contesting its validity unless sufficient cause for non-appearance be shown.

5. The question as to the comparative merits of oral or written evidence is rather more relative than positive, and but little hope of general agreement can be entertained. A volume might be written upon it. In criminal cases it is the unquestioned right of an "accused person to have his accusers face to face." In a great majority of actions at common law the same mode of taking the evidence is also to be preferred, though we doubt not that many an unrighteous demand is yielded to, rather than pass the ordeal of an appearance and examination in open court. Much depends upon the character of the witness and the conduct of the examining counsel, and certainly more than sufficient protection is rarely experienced at the hands of the Court. But, apart from all this, it remains to be considered whether it is possible, in a long case of complicated circumstances, where the evidence must be very lengthened, that either the judge or the jury should be able to give the necessary attention to minute details, and make such a comparison of the evidence of one set of witnesses with the other, as is requisite to a full, impartial, and complete understanding of the case. It may be a question, whether the present system of examination would have been maintained, had not experience shown that it was an efficient means of arriving at the truth. The result of the inquiry into this part of the subject, before successive commissioners and committees, has been

that, in proportion as the mode of taking evidence in the ecclesiastical courts is understood, it is better appreciated; and that it is well adapted to the purposes of justice in the bulk of cases which come before such tribunals. That such is the growing experience of professional men may be gathered from the evidence of Mr. Freshfield, the Solicitor of the Bank, an experienced and competent judge in such matters.*

The late Mr. John Hodgson, himself one of the Real Property Commissioners, when examined before the House of Commons, gave his cheerful testimony to the masterly and admirable manner in which very intricate facts of a contradictory kind had been sifted, and the undoubted truth ascertained, in a case occurring in the Prerogative Court of Canterbury, in which he had no interest, though the inquiry was one to which his attention had been directed throughout.

Some other points, such as the claim to administration among persons of admitted equal degree of kindred, objections to inventory and account, and other similar matters, may be heard upon petition and affidavit, where the facts are not of a nature to require investigation in the more formal mode of proceeding.

There remain to be noticed, in relation to the contentious jurisdiction of Doctors' Commons in comparison with other Courts, the two questions of expense and delay.

In regard to both, the reproach sometimes attempted to be cast upon the Prerogative Court is without foundation.

* See Evidence of Mr. Freshfield, in Appendix.

It is a fact, not less notorious than instructive, that when the validity of a will of realty is disputed, there is no class of cases which are the subject of such repeated trials at Common Law or in Equity, and of litigation at once so vexatious and ruinous to suitors. Mr. Freshfield, Mr. Metcalfe, Mr. Chatfield, and Mr. Sweet, all eminent and experienced solicitors, stated before the Ecclesiastical Commission from cases falling under their own observation, that the charges in the Prerogative Court were most reasonable. Mr. Freshfield added, having a general knowledge of the system in the Ecclesiastical Court, and experience also in the Courts of Common Law, that the same question would be tried in the Ecclesiastical Court at less expense than it would be at Common Law.—p. 39.

What the Common Law Judges and other Ecclesiastical Commissioners reported on this point is conclusive. "Whatever be the expenses," they say, "either of contested or common form business, those who have been examined respecting the practice of the Courts have admitted that the utmost attention and vigilance are used to prevent and avoid unnecessary charges to the suitors."—p. 70.

It would, perhaps, be thought invidious—it certainly would not be difficult—to maintain the character of these Courts on this point by comparison with those of Chancery and Common Law, where, the same questions having been at issue, the analogy is perfect; but to defend, not assail, is the object in view.

In regard to delay, it may be affirmed, without fear of successful contradiction, that there are no Courts in the kingdom less open to reproach than those of Doctors' Commons. To this several of the most eminent solicitors in London bore

witness before the Ecclesiastical Commission; their testimony being confirmed by the following passage from the Report, signed, among other distinguished persons, by Lord Tenterden, Lord Wynford, and Chief Justice Tindal: —

"If both litigants are disposed fairly to proceed to the investigation of the matter in dispute between them, whatever be the nature of the cause, and however opposed and contradictory may be the view they take of the facts on which each means to rely, there is scarcely any case, however complicated, which may not be brought to a final hearing within a year. That in the testamentary cause respecting the late Mr. Farquhar's will, where the property at stake was about half a million; where the main fact was, whether the testator had himself privately destroyed a duplicate of his will, which was in his own possession; and where a just conclusion could be formed only from circumstances involving nearly his whole history, tending to show the probable intention of his revoking his will, his affection towards his family, his transactions respecting his property, his own contradictory and insincere declarations; no less than 125 witnesses were examined, whose depositions occupied 908 folio pages; — still, under all these circumstances, the first allegation having been given in February, 1828, the sentence was finally pronounced in February, 1829; the cause being concluded in about twelve months." — *Report*, p. 71.

In a well known cause of bottomry, the Court of Chancery issued an injunction against proceedings in the Court of Admiralty, and, after three years' litigation, remitted the cause to the latter Court, which disposed of the question in as many months.

In the Report of the House of Commons Committee (1833), there occurs the following passage: —

"With reference to the subject-matter of the jurisdiction of both the Testamentary and Admiralty Courts speedy decisions are of paramount importance; so that any arrear of causes occasioned by a pressure of business would be very injurious to the suitors." — *Admiralty Court's Report*, p. 6.

Before the adjournment for the Easter recess the judge of the Prerogative Court had heard every cause then ripe for hearing.

The statistical result of the contentious business transacted in the Prerogative Court may be briefly stated thus: —

On the average, about 300 cases are brought before the judge of that court annually, in a summary way by motion; on the admission of allegations and by petition, about sixty; while about forty causes proceed to a hearing on evidence fully taken.

From these decisions, taking the average of the last fifteen years, there has not been prosecuted successfully more than one appeal annually.

It is submitted, therefore, that, whether in the matter of common form business or contentious jurisdiction, the Courts and practitioners of Doctors' Commons are not justly liable to reproach for expense, delay, or inefficiency.

It may be added, that the proposed substitution of either the Court of Chancery or of Common Law, in lieu of what now exists for the adjudication of all testamentary matters, is rather plausible than of substantial worth, without taking into any consideration or account the contingencies that wait upon every change, against which experience has often shown that it is not possible to provide.

That the existing arrangement of the profession in Doctors' Commons is attended with great advantages to suitors is satisfactorily shown by the evidence on the part of the late eminent solicitor of the Bank of England.

"80. From the nature of the profession at Doctors' Commons, the judge and the practitioners being all collected together there, has the Court a greater degree of influence over practitioners than

it possibly can have in the Courts of Common Law ?— I think so, comparing the proceedings of one with the other. I would rather, as a general regulation, say, that the subject of wills should be exclusively investigated in the Ecclesiastical Courts than that it should be exclusively investigated in the Common Law Courts; and I am satisfied that more justice is done by the deliberate attention paid by the individual judge to the evidence than those decisions which take place more upon the feelings of the jury than upon the facts of the case. I think that in any case in which you obtain an issue, the first inquiry a practical man would address to his own mind is, what degree of feeling can I excite in the jury, and that, therefore, there would be more likely to be a failure of justice at law than in the Ecclesiastical Court. An instance occurs to my own recollection where the question was litigated in the Ecclesiastical Court, as applied to personal property, and the decision was contrary to the interest of my client. I had the right afterwards of litigating that will, if I had thought proper, in relation to the freehold. If the same decision had taken place at law, I think I should have been tempted, by my preference for the Ecclesiastical Court, to ascertain what would be the opinion of the judge of that court, as applied to the personal property; but I was so fully satisfied with the decision of the Ecclesiastical Court that I did not take the opinion of a jury."

The result of the whole, then, is this: —

In the Prerogative Court of Canterbury an amount of business is daily transacted with order, with accuracy, and with despatch unknown to any other court in the kingdom, perhaps in the world, any interruption to which would be attended with such alarming results that, even were its transfer to another court unavoidable, the wisest would shrink most from the responsibility of the measure.

The same Court exercises a jurisdiction in contentious matters intimately associated with that in common form, which has for years been transacted to the satisfaction of

the public generally, with credit to the administration of the law, and without reproach to its practitioners.

The two branches of jurisdiction, common form and contentious, are so united and interwoven that it would be difficult to draw the line between them.

The great bulk of contentious business originates in opposition to the passing of probates in common form, commencing with a caveat that is warned. The interest (and consequent right) of the opposing party is set forth. Affidavits as to testamentary papers are exhibited — a most important preliminary proceeding; an allegation or plea is given in; witnesses may be examined at once; publication of their evidence prayed in a few days, or even hours; and no further opposition being offered, the cause may be disposed of, with very little expense, and in a shorter time than would be required, perhaps, to join issue at common law: whereas if, because there is incipient contention, the cause must be removed, the will and other papers must be transferred also; issue must be joined according to whatever may be the practice of the other Court; and the validity of the will must await its trial, perhaps on circuit, at a vast increase of expense and delay; after all, it must return to the Court, whence it set out, for probate. Where does the one end and the other begin? Moreover, to make the contention effectual to the binding of all parties, the machinery of the existing Court must be made use of; and whenever, or however, it begins, the contentious jurisdiction must spring out of that which is in common form.

If there be no contentious jurisdiction, there will be no judge; and then, not only will there be no control over practitioners, but there will be no Court to dispose of those

many matters which are now brought before it on motion, at a trifling expense, and with no loss of time.

Generally, it may be remarked that the varied, if not conflicting, machinery of any two Courts diversely constituted, will be productive of mischievous results.

The Courts of Common Law are not adapted to the transaction of testamentary business in common form; as, to its credit, has been acknowledged by the "Society for the Amendment of the Law."

Of disputed wills the number of cases which go to any serious length is very limited. The highest class of solicitors desire no change; and it is but an echo of the opinion expressed by themselves, to say that serious danger is to be apprehended from an indiscriminate indefinite increase of practitioners in that department of the law.

The concession just noticed, of the insufficiency of the Courts of Common Law in testamentary matters, extends also, on the other hand, to the Court of Chancery. Nothing, indeed, can be stronger than the practical admissions by Mr. Bethell involved in the scheme propounded by him in the House of Commons, viz. the transfer of the whole staff bodily from Doctors' Commons to Lincoln's Inn; for, 1st, The manner in which it is transacted in Doctors' Commons is satisfactory and beneficial to the country; else why propose its adoption by a transfer of its staff to the Court of Chancery? 2nd, The Court of Chancery is incompetent to it, else where the need of the proposed transfer?

But, as a counterpoise to it, there is suggested the impossibility of such a surrender of jurisdiction in matters of realty, as would be involved in the grant of authority to issue a probate declaring the validity of a will in respect to a real estate.

The character of the new Court of Probate being changed from Ecclesiastical to Royal, there will no longer be room for jealousy on that score. But indeed the Court of Chancery would part with nothing; for in the sense now under consideration, it does not prove wills either contentiously or in common form. It is for other Courts to determine how the interests of an heir-at-law and the devisees under a will are to be adjusted. As the law now stands, difficulties and delays of a very serious kind may arise to obstruct the passing of a probate. They are such as would in no respect be obviated by any transfer of jurisdiction in whole or in part; they belong to the characters of the property which are essentially different, not to the forms of proceeding peculiar to any Court; and before *comprehensive, complete* jurisdiction can be established for the Court of Chancery, it will be necessary to prohibit all actions at common law, of what nature or kind soever, appertaining to any matter or thing relating either to the validity or the contents of the will.

But even if that were conceded, the difficulty would not be at an end; for if any Court could have given to it jurisdiction of both kinds (twinborn), there must still be an elder and a younger brother. No man will file his bill for an execution of the trusts of a will, or bring his action for a legacy or the recovery of a debt, till the validity of the instrument itself has been established; for he may be suing on the foundation of waste paper.

It is no difficult matter, indeed, to assign reasons why it is expedient to keep the jurisdictions distinct. Delay in matters of realty is of comparatively small importance; the same observation applies here as on an earlier occasion. The

proving of a will of personalty requires all expedition compatible with security against fraud. The mischief that might arise from delay in obtaining probate of the will of very many merchants, bankers, bill brokers, manufacturers, and others connected with every department of negotiable securities, is incalculable. Land, meanwhile, is its own safeguard. And the only feasible remedy, viz. the appointment of a receiver by the Court of Chancery, would be no boon.

It seems unnecessary to follow out this course of inquiry by further illustration of the results: they would be in no degree compensated by the removal of what is, after all, but an anomaly: and anomalies are not always hurtful, little more in this instance than a theoretical evil. The mischief to be apprehended does not lie in that direction.

It may not be without its use to unprofessional persons to add a little more on this head, since by the use of specious terms and general assertion about the advantages of one Court and the fusion of all business in Chancery, inexperienced people are led to suppose, if the Court of Chancery had jurisdiction over the validity of wills, two suits might often be merged in one:—the fallacy is apparent—additional expense and delay would ensue, with the risk of a disorganised and unsettled system.

Suppose the validity of a will to be disputed, and its construction likewise.—By the present law it is the subject of two suits; viz., one in the Prerogative Court to decide the former, another and subsequent one in Chancery to determine its construction. In place of this it is suggested, on one hand, that it shall belong to Chancery to decide both the validity and construction. Two distinct suits there *must* still be, the only difference being that both are in Chancery.

By Mr. Collier's suggestion, the suits would be, one at Common Law, on the validity; the other in Chancery, on the construction. By neither plan would the number of suits be diminished. But a little attention to the proceedings on appeal in the trial of a will of personalty at Doctors' Commons, and one of realty in other Courts, will show the disadvantages of adopting either suggestion of transfer.

At present, if the validity of a will is disputed in Doctors' Commons, it *may* be the subject of two trials at most, one in the Prerogative Court, the other on appeal to the Judicial Committee of the Privy Council, both Courts determining for themselves all questions of law and fact. But the ordeal to which a disputed will of realty may be subjected, is not so simple or perhaps so easily explained.

If a devisee seeks to establish the validity of a disputed will, and a trust is created by it, he first files his bill in Equity; and as it is the practice of the Court of Chancery to refer such issues of fact to a jury, the will becomes the subject of a trial at Nisi Prius.

But supposing one of the parties to be dissatisfied with the verdict, he applies to the Vice-Chancellor, who directs the issue, to grant a new trial: the whole case is re-argued before him; and if the conscience of the Court is not quite satisfied with the verdict, that new trial is granted. The case then goes before another jury; — or suppose the new trial to be refused, that refusal is the subject of an appeal to the Lord Chancellor, and from him again to the House of Lords.

If the House of Lords pronounce for the appeal, the case will have undergone four trials to no purpose but to begin again.

But further: One of the parties may be dissatisfied with

the finding of the second jury. He then has the privilege of applying to the two Courts of Chancery and the House of Lords again.

Lord Campbell states in his evidence before the Ecclesiastical Commission, that in the case of the Duke of Roxburghe's will, the Master of the Rolls had ordered a third new trial, and that in the case of Davis and Morris there were three trials. He stated also, that the trial by jury would be intolerable, were it not for the power of granting new trials; for juries, sometimes from ignorance, more frequently from prejudice, give verdicts that are absolutely unjust.

Such is the ordeal to which the validity of wills of personalty will be subjected, according to one suggestion. When, however, circumstances have not occurred to give jurisdiction to the Court of Chancery over a will of realty, it may be disputed and tried by an action of ejectment at common law, and this will bring to view the disadvantages of the other scheme.

The issue, will or no will, would be tried first at Nisi Prius as before, questions of fact being determined by the jury, and of law by the judge. If either party be dissatisfied with the verdict of the jury, the whole case as proved at Nisi Prius is then re-argued before the Court in Banco. If a new trial be granted, and either party be dissatisfied with the verdict of the second jury, he may apply in like manner for a third trial, and so on. But he may be dissatisfied with the decision of the judge on an issue of law, and he may then appeal, 1st, to the Court in Banco;—2ndly, to the Exchequer Chamber;—3rdly, to the House of Lords; and this, after there have been two or more appeals on the question of fact. This is the suggested remedy for delay and expense in the Ecclesiastical Court.

There are other subjects, however, to which very serious attention is due.

The testamentary business of Doctors' Commons, which has been considered at length, forms only a part of the proctors' professional avocations. All need not be enumerated, and could not be discussed; some cannot be passed by.

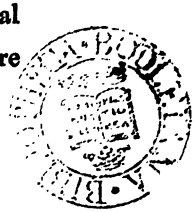
One very material consideration which is entirely overlooked by those who advocate the absorption of these courts in the courts of Westminster Hall, is the distinction between what is municipal, and what is international.

The Courts of Common Law and Equity are professedly constituted for the administration of our municipal law.

It is true that they are called on to determine points which involve a consideration of foreign law, when arising incidentally before them; it is equally certain that their judges do not court the task, and that they avail themselves of all accessible aid, when the occasion calls for it. But indeed the difference is so great between such occasional incidental notices and original jurisdiction in the matter, as to need no remark.

The Courts of Doctors' Commons, by their constitution, and from the nature of the causes they entertain, exercise an original jurisdiction over questions of foreign and international law.

Adverting once more, for a distinct purpose, to the practice of the Prerogative Court. Probates and letters of administration are granted day by day to foreigners. The validity of their wills is decided according to their national codes; and administrations of the estates of intestates are granted in conformity with their own laws of succession.



In the Arches and Consistory Courts judgments are given affecting the rights of foreigners, their legitimacy, and succession to property. There is at this time a suit respecting the legal effect of a separation said to have been made by the papal authorities at Rome, of persons natives of the United States and there married. Indeed, far nicer questions of international law arise in cases of this nature than most men are aware of; as may be learned by a reference to the well known work of the great American jurist, Mr. Justice Story, who says on this subject, when writing on the Conflict of Laws: —

"Some of the most embarrassing questions belonging to international jurisprudence arise under the head of Marriage and Divorce. . . . . It is difficult at the present moment (he adds) to give any answer to them, which would receive the unqualified assent of all nations." — p. 276.

The proposal for the transfer of jurisdiction in matrimonial causes from the Ecclesiastical to the Temporal Courts, is based on the erroneous assumption that marriage is a civil contract.

To treat marriage as *merely* a civil contract is both historically and *legally* incorrect.

Viewing it historically, it has a threefold character; viz., that of a natural, a civil, and a religious contract.

Words cannot express it more clearly than as they are found in the following passage, occurring in the celebrated judgment of the late Lord Stowell, in the therefore memorable case of Dalrymple *against* Dalrymple occurring in the Consistory Court of London: —

"Marriage in its origin (says that very learned Judge) is a contract of natural law; it may exist between two individuals of

different sexes, although no third person existed in the world, as happened in the case of the common ancestors of mankind. It is the parent, not the child, of civil society—'Principium urbis et quasi seminarium reipublicæ.' In civil society it becomes a civil contract, regulated and prescribed by law, and endowed with civil consequences. In most civilised countries acting under a sense of the force of sacred obligations, it has had the sanctions of religion superadded. It then becomes a religious as well as a natural and civil contract; for it is a great mistake to suppose that, because it is the one, therefore it may not likewise be the other. Heaven itself is made a party to the contract, and the consent of the individuals pledged to each other is ratified and consecrated by a vow to God."— 2 Hagg, *Consist. Rep.* p. 63.

But there are still further objections that may be fairly urged to this scheme of transfer.

The *rules* of *law*, and the *code* of *law*, which are generally applicable in cases of marriage and divorce, are not the same as those which obtain in cases of contract in our Courts of Common Law and Equity.

The admitted law on this subject cannot be better stated than in the words of Lord Robertson, a distinguished Scottish judge: —

"Marriage is a contract *sui generis*, and differing in some respects from all other contracts; so that the rules of law which are applicable in expounding and enforcing other contracts may not apply to this."—Lord Robertson, in Ferguson on *Marriage and Divorce*, 397—399.

And, it must be borne in mind, that the canon law (no unimportant branch of the study of the civilian) is the basis of the marriage law of England, as it is of the marriage law of Europe.

So is it clearly enunciated by Lord Stowell in the following passage extracted from another of his many memorable judgments.

"The Ecclesiastical Court has an undoubted jurisdiction upon the general law of marriage, *so far as the legality* of that contract is constituted by the law of this country. It also examines questions of foreign marriages, in cases of *British* subjects, and sometimes of *aliens*, and it does this from necessity, in order to prevent a failure of justice; and with the satisfaction of knowing that the principles which regulate English marriages are such as are also generally applicable to marriages of foreign Christian countries; the marriage law of *Europe* being founded on the same general principles, and having for its basis the ancient Canon Law, so that there is not much danger that the Court can proceed wrongly on such general principles and on such a basis."—*Lindo* v. *Belisario*, 1 Hagg, *Consist.* p. 216.

Nor is this less the case since the passing of the last Marriage Act, than it was before.

That act prescribed and legalised certain additional forms of marriage ceremonial, but it does not affect in any way to meddle with the general law of marriage and divorce. Nay, as if to place the matter beyond a shadow of a doubt, it expressly declares "that marriages solemnised under that act shall be cognisable," as marriages were before.

6 & 7 Will. 4. c. 85. s. 35.

The rules of law, as derived from the canon law, are, as heretofore, of equal force in all causes relating to marriage and divorce, wherever, and however, the marriage shall be solemnised; and it would seem but reasonable, and to flow from a regard for the administration of justice, that the jurisdiction over questions of marriage and divorce should belong to the Ecclesiastical Courts, whose judges are conversant with that law.

Lord Eldon, who has never been accused of underrating the capabilities of the Court of Chancery, on a case of this nature coming before him, as Lord High Chancellor (the point at issue being the validity of an asserted Jewish mar-

riage*), referred it to the ecclesiastical tribunals of Doctors' Commons, and abided by the decisions of the Judges of the Consistory Court of London and of the Arches Court of Canterbury.

Lord Brougham may likewise be quoted as considering those conversant with the practice of the courts of Doctors' Commons more qualified than others to deal with cases of this nature. For in a recent appeal before the House of Lords against a divorce decreed by the Court of Session of Scotland, his Lordship intimated at the opening of the appeal that his impression was that the sentence should be reversed, but that he was unwilling to move for judgment to that effect until the House had an opportunity of hearing a learned civilian on one point. His Lordship declined to hear an eminent Chancery counsel, and called upon the present Queen's Advocate to argue the point. Before moving judgment his Lordship remarked,

"That the case was one of considerable importance and of a somewhat novel nature either in Scotland or in this country. He had, therefore, requested the learned civilian to speak on one point, and he had been of great service to their Lordships in throwing light upon the state of the English law, particularly of the civil law as administered in the Consistorial Courts." — *Paterson* v. *Paterson*, 3 *House of Lords Cases*, p. 321.

Domicile is a very frequent and material issue. A cursory glance at the cases decided in the Prize Court during the last war, will show how constantly on this difficult question the rights of litigant parties depended. It is the same also in the time of peace. There are no courts in the kingdom to which foreigners have occasion so frequently to

* Lindo *v.* Belisario, mentioned in the preceding page.

resort voluntarily or of necessity for the administration of justice.

The Court of Admiralty, which in the main adopts the principles and practice of the civil law, exercises extensive jurisdiction over the rights and property of foreigners.*

By its warrants their vessels are arrested (no other Court in the kingdom has ever possessed the power), and by its decrees they are disposed of by sale.

It is a matter of constant occurrence for one, and sometimes both, parties in a suit to be foreigners. The foreign merchant advances money for the repair of ships on bottomry, relying on the decree of the Court of Admiralty to enforce payment.

In cases of collision, salvage, and wages, foreigners come continually for redress, or appear in the character of defendants; and that they should prefer these courts to our other tribunals can occasion no surprise, when it is recollected that the principles and mode of procedure adopted in our civil law courts are in harmony with the system of law prevailing in most of the Continental states of Europe.

The principle on which this branch of the law is administered in Doctors' Commons, as laid down by Lord Stowell with his accustomed elegance and precision, in relation to matters of prize, is the same on all the questions to which reference has now been made.

"The seat of judicial authority is indeed locally here, in the belligerent country, according to the known law and practice of nations; but the law itself has no locality. It is the duty of the person who sits here to determine this question exactly as he would determine the same question sitting at Stockholm; to assert no pre-

* See Evidence of Dr. Lushington in Appendix.

tensions on the part of Great Britain, which he would not allow to Sweden in the same circumstances; and to impose no duties on Sweden as a neutral country, which he would not admit to belong to Great Britain in the same character."—*Maria*, 1 *Rob.* 350.

And again:

"It is to be recollected that this is a court of the law of nations, though sitting here under the authority of the king of Great Britain. It belongs to other nations as well as to our own; and what foreigners have a right to demand from it is, the administration of the law of nations simply, and *exclusively of the introduction of principles borrowed from our own municipal jurisprudence, to which it is well known they have at all times expressed no inconsiderable repugnance.*"—*Recovery*, 6 *Rob.* 348.

In what manner these high professions were fulfilled may be gathered from the impartial testimony of Mr. Justice Story, in a Letter addressed to Lord Stowell, to be found in Townsend's "Lives of Eminent Judges," vol. ii. p. 335.: —

"In the excitement caused by the hostilities then raging between our countries, I frequently impugned your judgments, and considered them as severe and partial; but on a calm review of your decisions after a lapse of years, I am bound to confess my entire conviction both of their accuracy and equity. I have taken care that they shall form the basis of the maritime law of the United States, and I have no hesitation in saying that they ought to do so in that of every civilised country in the world."

Importance of a body of Civilians.

One very material consideration remains, which ought not to escape the careful attention of statesmen. Any elementary work will tell of the common origin of the Admiralty and Ecclesiastical Courts, and how those tribunals have travelled on through time together. They now exist in Doctors' Commons beneath the same roof, under the guidance of the same judges, and with the aid of the same bar, the proctors prac-

tising in each. These are the Arches Court of Canterbury, the High Court of Admiralty, the Prerogative Court of Canterbury, and the Consistory Court of London, other neighbouring Courts profiting by their proximity, and all the Diocesan Courts in the southern part of the kingdom sharing more or less in the benefit derived from the same establishment. The keystone of the arch is the testamentary jurisdiction of the Prerogative Court, which now extends a wholesome influence, and might easily be made to exercise a salutary control, over the whole ecclesiastical and testamentary jurisdiction of the kingdom. The Judicial Committee of the Privy Council is the Court of ultimate appeal from all, that tribunal having been of late years established, and the jurisdiction of the Court of Admiralty having been still more recently extended by act of Parliament. Nothing can be clearer or stronger than the testimony borne by men of the highest rank and attainments (Lord Campbell* himself taking the lead) to the importance, in a national point of view, of sustaining the bar of England in a state of efficiency, and to the continued training of a body of civilians, from among whom the judge of the High Court of Admiralty is chosen, and Her Majesty's Advocate General is selected, the latter officer being the responsible law adviser of the Crown in foreign and colonial affairs, and in matters ecclesiastical, and

* "I have the most sincere respect for the civilians as a body, and I should think that any alteration of the law that would not preserve the learning which is now to be found among the civilians, would be very objectionable. I think that, in a national point of view, it is of importance that the King's Government should have an opportunity of consulting such a man as Dr. Jenner (then King's Advocate) on international law, and I say that any change of institutions which would prevent the Government from having such assistance would be very objectionable."

to the incalculable importance of whose office there is abundant testimony. The evidence of Mr. Hamilton, a long time Under Secretary of State for Foreign Affairs, and of Chief Justice Tindal and Dr. Adams, on this point, is to be found in the House of Commons' Report upon the Admiralty Courts for 1833.*

Questions of Slave Treaties. — The Queen v. Serva.

The importance of a bar of civilians with respect to questions of the Slade Trade cannot be overlooked in a country which wishes to tread in the path of legality, whilst it has placed itself at the head of the movement against that nefarious traffic, which has negotiated so many treaties for the suppression of it, and which has been frequently on the verge of war with other powers by reason of questions involved in the capture of slave ships, or the search of suspected vessels sailing under foreign flags. In the case of the *Queen* v. *Serva and others,* reported in Denison's Crown Cases, p. 131. (Mich. Term, 1845), the aid of civilians was expressly required by the twelve judges at Serjeants' Inn, after an elaborate argument from eminent common law counsel. The court on this occasion heard four civilians at length, and the majority of the judges, who were present, decided that the conviction of the Brazilian seamen by the Court of Assize was wrong, on the ground of want of jurisdiction in an English court to try an offence committed on board a foreign vessel.

It cannot be denied that so long as the Maritime Law of Nations, and the Public Law of Europe, both grounded on the Civil Law, are of authority in this country, suitors, par-

* See the Evidence of Mr. Hamilton, and Chief Justice Tindal, and Dr. Adams, in Appendix, pp. 49—58.

ticularly foreigners, are entitled to some security that there shall be counsel qualified by their learning to conduct causes of this nature.

The absence of a system of special education for the English Bar has been of late years matter of loud complaint, which has at length resulted in the establishment of lectures and of an examination for persons who wish to take the degree of outer barrister in the Inns of Court. This desired end would seem to be practically furthered by the existing requirements for admission to the Civil Law Bar: for students in Civil Law at Cambridge, and, under the operation of statutes recently passed, at Oxford, will be required before proceeding to a degree in Civil Law to have attended lectures and passed a *bonâ fide* examination on the subject-matter of their future professional studies, so that an Academic degree of Doctor of Civil Law will be a substantial guarantee for a definite amount of special and systematic study. On the other hand, the abolition of a special Bar in the Testamentary Courts would be of no substantial benefit to the suitors, whilst it would be destructive to the civilians, as a body. A speech from a leading counsel after a mass of evidence is comparatively of little value, when addressed to a judge. It is in the conduct of a testamentary cause in its earlier stages and pleadings, that the skill of an advocate is felt. The practice of the English Bar already points to the division of labour as established in the distinction of the Chancery Barrister and the Common Law Barrister, and *eminence is necessarily specific*, so that there is nothing anomalous either in practice or principle in the existence of a Civil Law Bar, as the complement of the entire Bar of England.

The late Sir John Nicholl expressed himself clearly and

strongly in favour of an University education and degree as preparatory qualifications for the profession of the Civil Law. To its value, as a distinct bar, testimony has been repeatedly borne, and is on record. The question was made the subject of long and careful inquiry before a Committee of the House of Commons in the year 1833, the result of which was a recommendation of its continuance, and its preserved connection with the Universities.

When a case of such a nature or magnitude may arise in which the parties desire the attendance of counsel from other bars, that may surely be obtained by application to the Judges of those Courts, as easily as that of civilians in the Courts of Common Law.

Upon the disadvantages to suitors which may ensue, if the Testamentary Courts should be deprived of a Special Bar, the opinion of the late Chief Justice Tindal, which will be found in the Appendix, is well worthy of attention; that of Mr. Freshfield is added as the result of professional experience.

A few words of practical improvement must be added.

It has been shown already that the supposed inconvenience of conflicting decisions from having separate tribunals for wills of realty and wills of personalty exists in theory more than in practice; and it is submitted that legislation should be invoked to remove practical, not theoretical evils.

The mistakes into which the Real Property Commissioners fell may be traced to this origin, viz.,—

They endeavoured to assimilate two things in their nature essentially different,—realty and personalty.

There is no similitude between them, and there can be no analogy in the mode of legislating for them.

The error has been, and the error is, endeavouring to conform the thing to the act, not the act to the thing,—the body to the measure, not the measure to the body.

Accuracy is of vital importance in a commercial country like England, where personal property is accumulating at such an enormous ratio from the introduction of railways and joint-stock companies.

It has been further shown how every one of the 12,000 grants, which issue annually from the registry of the Prerogative Court, is subjected to the vigilant inspection of at least three persons, possessing such competency to the task as nothing but experience can impart; the true test of which is, the infrequency of the almost unknown occurrence of any grant being set aside by reason of irregularity or failure of duty in the public office.

The establishment of a General Court of Probate, and a General Registry of Wills, with a corresponding adaptation of what are now the Diocesan Courts and Registries, which has been repeatedly proposed, and which was suggested by Lord Chancellor Lyndhurst, when he held the seals in 1843, coupled with the abolition of the peculiar jurisdictions, and the regulation of the sinecure of the principal Registrar, is a proposal against which no reasonable objection has been or could be made. It is a measure which might be carried into execution without difficulty or risk.

1. There will then be preserved the existing staff of Diocesan Registrars for every other and all ecclesiastical purposes.

2. The common form testamentary business of the country will proceed as it has heretofore done.

3. The Civil Law (Admiralty Court) Bar will be preserved, and no needless risks will be incurred, such as inva-

riably, and in the nature of things, must and will attend organic change.

4. There will be no reckless destruction of existing institutions and interests.

The remaining subject, at least the only one worth naming, since church-rates and other matters, *ejusdem generis*, if any there are, need not now be discussed, is that which relates to the discipline of the Church, with all its family connections and dependencies.

There is neither time nor space for suggesting amendments in this respect. It is too comprehensive, and too complicated, also, for discussion here.

It has never been proposed, as we believe, to withdraw such proceedings (considered, as they are, to be purely ecclesiastical) from the cognisance of the Bishops' Courts, yet civil rights are involved in all.

The Ecclesiastical Courts of this kingdom are capable of being and ought to be of inestimable value. If instead of such harsh terms as "cleansing the Augean stable," "cutting up" and "absorbing" the whole ecclesiastical jurisdiction of the kingdom, measures of adaptation and improvement were matured, it would be found that by a temperate and discreet regulation the ecclesiastical jurisdiction might still continue to be the great link that binds together the Church and the State, the severance of which, whether by violence or gentler means, would be attended with the ripping up of ancient foundations, and the destruction of a fundamental feature in the *national* character of the Protestant Established Church of this realm.

That, which should not be destroyed, may yet be modified with advantage.

APPENDIX.

Evidence of Mr. Freshfield, Solicitor to the Bank of England.

" 1185. You are solicitor to the Bank of England? — I am.

" 1186. Have you had extensive practice in business in Doctors' Commons on questions arising out of probates and administrations? — I have.

" 1261. Have you read the Fourth Report of the Real Property Commissioners? — Yes, I have.

" 1262. Will the mode of registration suggested by the Commissioners afford, in your opinion, as much security against fraud as is now afforded in the court of Doctors' Commons? — I think not. I am in favour of the system of registration as practised in Doctors' Commons.

" 1263. In the case of *de bonis* grants, do not very nice questions arise as to the persons to whom the grant is to be made, and whether the person is residuary legatee? — Very nice questions, which, in some cases in the country, I am satisfied, would frequently lead to an expense which would be avoided, if the transaction passed through a proctor of experience, and which would not be the only inconvenience avoided.

" 1264. These questions requiring the consideration of experienced persons? — Yes, grants to be made which involve very important questions, — *de bonis* grants. One is treated as the acting executor, without reference to the fact of another executor having survived who never proved the grant to him. The executor of such acting executor would not be a due representative, and yet such mistakes are frequently made.

" 1265. May it not in some instances involve the right to the property, as well as the right to the grant? — Yes.

" 1266. Are there not very nice questions frequently who is the residuary legatee, and whether the residue is disposed of or not? — Yes."

Evidence of Lord Chief Baron Alexander.

" 1151. Has your attention ever been directed to the fact whether there have been within the last quarter of a century many conflicting decisions upon the validity of the same will between the Court in Doctors' Commons and the verdict of a jury, the one respecting realty, and the other personalty? — I cannot at present bring a single instance of it to my mind. Such an incident cannot, therefore, have been very frequent.

" 1152. Sitting as a judge in court, has it occurred to you that you had been informed, when a suit was pending before you upon the subject of a will, that it had before been contested in the Ecclesiastical Court, and a kind of complaint made that now it was necessary to contest it over again for the matters brought before you in Equity? — I have no recollection of any such case.

" 1153. And yet, during your presidency in that court there was a great number of suits attaching to the disposition of property and effects under wills? — There were."

To question 1156 he says, — "The principal objections to the question being tried in two courts are, first, the double expense, and, secondly, the reproach upon the law itself of different decisions in respect to the same instrument. Both these one would wish to avoid, but I am unable to measure exactly the degree of inconvenience which may be expected to arise from uniting them in one court; it would require too extensive and detailed a review of the subject.

" 1157. In your experience, you do not recollect an instance of that reproach upon the law to have occurred? — I do not remember one."

Evidence of Mr. Freshfield as to Mode of taking Evidence.

" 46. Have you been examined as a witness?—I have. I think the mode of eliciting truth is extremely satisfactory in the Ecclesiastical Courts.

" 50. Did you ever know an instance of an honest witness being kept back from examination in the prudent management of a cause (at Common Law)? — Many instances. I have known it done at considerable peril. I have had to tender, or not to tender, in my own discretion, men of the highest honour, upon whose veracity I would pledge my life; but have decided against their production on account of the anxiety I have felt as to what might be the effect of placing them in the witness-box — an anxiety increased by the honour and delicate feelings of the parties.

" 51. Is it the result of your observation that by the mode of examination in Doctors' Commons the truth is elicited? — I think so.

" 54. Is the number of appeals in the Ecclesiastical Court considerable? — I think not, as compared with appeals from other courts.

" 61. Have you any recollection of a case in which you have been concerned in the Ecclesiastical Court where the proceedings have been heavy? — I have. I think the case of *Harrison* v. *Kinleside* was one of the heaviest cases I have known, and in which the expense of proceeding was extremely moderate. No such case as that could have been tried at law, but at an enormously increased expense.

" 64. Do you consider that the charges of proctors in the conduct of a cause of that kind are reasonable when compared with the charges of a solicitor in conducting a similar case in courts of law? — I think they are quite unexceptionable.

" 75. Do you consider the charges to be fairly made?—I think so; the great ground of complaint is against the revenue, not against the court. I think the charges made and allowed in the Ecclesiastical Court are very moderate.

" 80. From the nature of the profession at Doctors' Commons,

the judge and the practitioners being all collected together there, has the court a greater degree of influence over practitioners than it possibly can have in the Courts of Common Law? — I think so, comparing the proceedings of the one with the other. I would rather, as a general regulation, say, that the subject of wills should be exclusively investigated in the Ecclesiastical Courts, than that it should be exclusively investigated in the Common Law Courts; and I am satisfied that more justice is done by the deliberate attention paid by the individual judge to the evidence, than those decisions which take place more upon the feeling of the jury, than upon the facts of the case.

" 1226. Have you had much experience in litigated cases in Doctors' Commons?—Yes, I have.

" 1227. Do you consider that in general the decisions have been satisfactory? — Yes; my own opinion is decidedly in favour of those courts. I know no court the decisions of which have been more satisfactory.

" 1228. What should you say of a transfer to the Court of Equity of all suits in relation to wills? — I am of opinion that if such rules of court and orders as are within the power of the judges of those courts were introduced, it would be no improvement to supersede the courts of Doctors' Commons, and that to transfer the business to the Court of Chancery would be to inflict a positive evil upon the subject.

" 1229. Do you think greater expedition would be attained by the transfer? — I think the contrary.

" 1230. Do you think less expense would be incurred by a suitor? — I think not.

" 1232. Do you see any advantage from such transfer? — Not the least."

Evidence of the Right Honourable Dr. Lushington

" 490. Have you read the report of the Commissioners of Ecclesiastical Inquiry, and the Fourth Report of the Commissioners on Real Property, so far as relates to the transference of the business from one court to another? — I have.

" 491. Will you favour the Committee with your ideas upon the subject? — I think that, to determine what system ought

finally to be established for the purpose of taking probate of wills and issuing letters of administration in cases of intestacy, is a question of very great importance, and of extreme difficulty, and I also am of opinion, that if, on examination, it shall appear that any proposed scheme may not, as a matter of certainty, introduce a system much more beneficial to the public than at present exists, in justice to a profession which has been long established, the whole of its business ought not to be taken away from it. I can entertain no doubt that if probates and administration were entirely taken away from the Ecclesiastical Courts, the inevitable consequence must be a complete extinction of that branch of the profession. I conceive, as far as my experience goes, confining now my observations to the courts which sit at Doctors' Commons, that the whole business of passing probates and administrations has been conducted with very great care and accuracy; but I am not prepared to say that many amendments might not be made whereby considerable expense might be saved to the public at large. I am clearly of opinion, in conformity to the report made by the Ecclesiastical Commissioners, that some alteration is indispensably requisite. I conceive that it is absolutely necessary that the right of granting probate and passing administration shall be taken away from the courts practising in the country, and that for a variety of reasons.

"492. Will you be so good as to state the reasons which particularly induce you to think that there would be an objection to the transference of the business from the Ecclesiastical Court, as proposed by the Real Property Commissioners? — I have already observed, that it would be the ruin of the profession; the advocates are not many in number, and perhaps any consideration of their interests might not be deemed of so very great importance to the public in this point of view; but with respect to the proctors practising in Doctors' Commons, the clerks and other dependents upon them, I consider it would be an infliction of a great hardship, not to say injustice, if such an alteration were effected, which must inevitably involve them in ruin, unless the public interest imperatively demanded it. I think also, that without this branch of the business the Admiralty Court must necessarily be left totally and entirely without any practitioners, and it is then for the Committee to consider whether it would be possible in any

other way to supply the deficiency which would be thus occasioned with relation to the very great and important interests which are disposed of in the Admiralty Court during the period of a war. I beg here to observe, that I think no one can exaggerate the importance of the Admiralty Court, during the time of a war; whether you look at the immense amount of property which is to be disposed of, or you look at the fatal consequences which would necessarily follow from any gross error being committed by the judge, or from any improper practices creeping into the administration of the law at that time, no man acquainted with that subject can, I am sure, overrate the extreme importance of accurate practice and knowledge with respect to that branch of our jurisprudence: unless some means could be devised whereby a supply of sufficient advocates could be insured during this period, unquestionably a very considerable risk and great injury would arise.

Evidence of Mr. Hamilton, Under Secretary of State for Foreign Affairs.

"1039. How long did you hold the office of Under Secretary of State for Foreign Affairs? — From the year 1809 to the year 1822.

"1040. During that period were there any occasions on which you had communication with the law officers of the Crown connected with the civil law? — We had frequently occasion to refer cases to the King's Advocate, and sometimes also to the King's Advocate and the Attorney and Solicitor General in one and the same communication.

"1041. Were those communications of an important and confidential nature? — They were always more or less confidential, but they were always of importance.

"1042. Are you of opinion, from the result of those communications, that it is of the highest importance to the foreign affairs of this country, that the person holding the office of King's Advocate should be a lawyer of the first eminence in his branch of the profession?—Undoubtedly so; his opinions were of the great-

est use to His Majesty's Government in deciding on very important questions which affected the law of nations.

"1043. A considerable portion of the time during which you were Under Secretary was a time of peace? — From 1815 to 1822; at the same time I should say I was out of England for a year and a half of that time, in consequence of ill health.

"1044. During the period of peace, when you had experience of the business of the Foreign Office, did it frequently happen that even then there was a necessity for having recourse to the opinion of the King's Advocate? — Very frequently; not so frequently as in time of war, but still very often.

"1045. From your experience, can you say that during the period of peace you consider it a matter of importance for the conduct of the Foreign Office, that there should be a means of having communication with a person versed in the law of nations, on whose opinion a Minister of State could safely rely in his negotiations with other nations? — Most certainly; I should think the Secretary of State would be very often at a loss in what manner to reply to cases that come under his consideration without having a legal opinion by an individual, whose professional studies and constant occupation gave him great familiarity with the practice and the law of nations.

"1046. In cases where reference is made by the Secretary of State for Foreign Affairs to the King's Advocate, does it generally happen that the judgment of the Secretary of State is governed by the opinion of the King's Advocate? — With very few exceptions indeed it is always governed by that opinion; and I am not quite sure that I could name any case in which it was not so.

"1047. Do questions frequently occur during peace, on which it is necessary for the Secretary of State to have recourse to an advocate such as you have described? — It may be difficult to reply generally to that question; but many cases of reference to the King's Advocate have arisen out of our treaties of peace with America and other Powers, and especially out of our engagements with Spain, as applicable to the peculiar situation of the South American colonies.

"1048. Independently of questions arising in time of war, questions even in time of peace occur, arising out of existing treaties,

in which it is important that the Secretary of State should have the opinion of an experienced advocate? — Certainly, I should say that it is absolutely indispensable.

"1049. You would conceive that the situation of Secretary of State for Foreign Affairs might be very embarrassing, if he had not such assistance to have recourse to? — Not only very embarrassing to himself, but very prejudicial to the public service.

"1050. Do you know how other governments are supplied with the assistance, which you know, from your own experience, is derived from the King's Advocate by the Secretary of State in this country? — I cannot positively say that I ever remember hearing elsewhere of an appointment exactly corresponding to that of King's Advocate in this country.

"1051. How do you suppose that the Secretary of State in Spain or in France is enabled to meet the arguments which are suggested to the Secretary of State for Foreign Affairs in this country by the King's Advocate? — I should say that they meet them very often by acting from partial and political feelings in many cases; that they do not give fair and honest justice to foreigners in the degree in which we do; that the opinion of the King's Advocate has always been given free from fear or partiality, or anything in the shape of instruction or hint.

"1052. Do you know, from your official communication with other nations, whether our conduct, in relation to these questions, is held in great estimation? — I cannot answer that question precisely, but my feeling is much in favour of its being so esteemed.

"1053. Have you reason to believe that, in consequence of the opportunity of consulting with an eminent civil lawyer here, there is a greater knowledge of the law of nations in the Foreign Departments of this country than in the Foreign Departments of other countries? — That is a very delicate question, and I should be inclined to answer, that it occasions rather individual ignorance on the subject, for we are more inclined to rely on the knowledge of others.

"1054. Is the result that, with the advice of the King's Advocate, you act with a fuller knowledge of the law of nations than you have found on the part of other governments? — Most undoubtedly so; I believe we were, by the help of the King's Ad-

vocate, in all cases right; I do not recollect the Secretary of State having occasion, on the part of His Majesty's Government, to recall an opinion given under the sanction of the advice of the King's Advocate."

Evidence of Lord Chief Justice Tindal.

"1388. Do any other reasons occur to you against the policy or propriety of the alteration above referred to? — There are, certainly, other grounds upon which I should object to that which would appear to be in effect the destruction of the Prerogative Court, of a nature very different from those to which I have hitherto adverted. I think it is of the utmost importance to this country to have the civil law well understood in this country, both as to science and in practice. In time of war, the law of prize, the rights of neutral and co-belligerent nations, everything that touches the relation between England and foreign countries, is governed and conducted on the principles, not of the municipal, but of the civil law. In time of peace, the interpretation of treaties and the formation of new ones, and all that arises from the relations of different nations in peace and amity, is governed by the same principle. A constant succession of gentlemen well versed in the knowledge and practice of the civil law is therefore indispensable, in order that those offices may be properly filled from which the Government have the right to expect the high services to which I have adverted. Now, the profits to be made in the Prerogative Court from testamentary causes is, in time of peace, the principal source from which the emoluments of the bar are to be derived; and upon this account any change which would have the effect of destroying, or in any considerable degree diminishing, the support and maintenance of that bar, I consider as highly detrimental to the public. To go no further back than the end of the seventeenth century, the treaty of Nimeguen, the foundation for the general peace which followed, was planned, conducted, and carried into effect principally by the labours of Sir Leoline Jenkins, the most able civil lawyer of his day, at that time the judge of the Court of Admiralty and of the Prerogative

Court of Canterbury. At a still later period Sir William Scott, by his able and luminous decisions, may be said to have settled the prize law throughout Europe, in times of new and unexampled difficulty. But if the regular and ordinary emoluments of the courts at Doctors' Commons had been withdrawn, it is not too much to say that these men would not have been found when they were most wanted; and I think the same consequence will follow if they are withdrawn now. I do therefore think that, unless a much stronger case can be made out for an alteration which will in effect occasion the destruction of the bar in Doctors' Commons, it will be much better that such alteration shall not take place, for I think the knowledge and practice of the civil law in this country would fail if the just emoluments due to the bar of the civil law courts were taken away.

"1390. Does it appear to your Lordship that such a nation as this, having a great number of colonies, the foundation of whose law is the civil law, has a peculiar interest in maintaining a bar of civilians? — I think more so than any other country in the world.

"1395. Is your Lordship of opinion that the practice before that tribunal (the Privy Council) would lead to the dedication of time on the part of the practitioners at that bar to those particular studies? — Undoubtedly it would have a great tendency to promote the study of the civil law; but I think it never could supply the want of a regular civil law bar."

Mr. Freshfield's Evidence.

"73. Do you see any advantage that would arise from the admission of gentlemen of the Common Law bar?—I should say not: I am decidedly in favour of exclusive bars; I think that a change would be found very inconvenient. You avoid those delays which take place from asking for accommodation, in favour of particular counsel engaged elsewhere, and you avoid the necessity of retaining a greater number of counsel, as you must do if foreigners were admitted. If counsel practised in all courts, they would not be able to arrange for their attendance, and it would become necessary in

great cases, as is the case in Ireland, to retain many counsel, in order to secure the attendance of some; because, at the time you want your counsel in the King's Bench, one individual would be in the Court of Exchequer, and another in the Court of Chancery, and another in the Ecclesiastical Court; and I have understood, that, in Ireland, where the practice prevails, if you get two out of five or six, you are considered fortunate. I say nothing of the greater advantage of having gentlemen more familiar with the system prevailing in each court, than the counsel would be if they practised indiscriminately in all."

Evidence of Dr. William Adams, a Commissioner to negotiate the Treaty of Ghent.

"1062. While you were at the Doctors' Commons' bar, were you ever employed in any public capacities? — Yes, I have acted in several public capacities. The first employment I had of a public kind was not under a Commission from the Crown, *jure coronæ*, but from the First Lord of the Admiralty, to prepare tables of fees to regulate the practice of the Vice-Admiralty Courts abroad; and I assisted, with several others in the profession, all of them civilians, and we prepared tables that were afterwards in use in all the Vice-Admiralty Courts abroad. That lasted about two years. The next public employment I had was as a commissioner, together with Lord Gambier and Mr. Goulburn, to negotiate and conclude a treaty of peace with the United States of America. We went to the town of Ghent in Flanders, and resided there five months, and effected a treaty of that kind, which was signed in the month of December, 1814; and very soon after I came home, I was employed in another capacity, with some other commissioners, Masters in Chancery and others, to prepare reports upon fees and emoluments of all the officers in all the courts of justice in England. We made many reports. I assisted much in the preparation of those reports. Besides the treaty executed at Ghent, I also had a subsequent employment of a public kind, to negotiate and conclude a treaty of commerce with the United States of America, which was done in conjunction with the present Lord

Ripon (Mr. Frederick Robinson at that time), and Mr. Goulburn; it was signed in the month of June, 1815, I think.

"1063. Do you consider that your knowledge of the law of nations was of great service and utility in negotiating those treaties? — It would be a mere affectation of modesty if I did not say I think it was; there was no other person in the commission acquainted with that subject; but I would rather make reference to others on that matter. I would refer to Mr. Goulburn; the death of Lord Gambier prevents my referring to him, but his nephew, Mr. Charles Gambier, is alive; he was an *attaché* to the commission, as private secretary to his uncle; and Mr. Anthony St. John Baker is alive, and in England; he lately was consul-general and *chargé des affaires* in America; he was secretary to the commission. I consider that the parts of that treaty which related to maritime rights, and subjects of that kind (which were the most important parts of the treaty), could not have gone on without a civilian. I always took a forward part in the conferences on those points, and I took the sole preparation of the despatches relating to all those matters upon myself, in correspondence with Lord Bathurst; all the parts of the despatches relating to those matters, setting out the discussions and the arguments, were done by me singly. And there was not a conference held by those commissioners, on any subjects of the treaty, which was not held in pursuance of a scheme I previously drew up. Having myself no rank, I rather wished Mr. Goulburn generally, and occasionally Lord Gambier, to stand forward, and to take the more ostensible parts on all other subjects than maritime rights. Before any discussion was entered on, I prepared memoranda for the discussion, particularising thus: if it takes this turn, then such an argument will apply; and if it came to the maritime rights, then I stepped in to take the lead; the moment that was discussed, I fell back again, and Mr. Goulburn took the lead.

"1064. Have other civilians, at different times, been similarly employed?—Yes, I can give a list of many who have; Sir Leoline Jenkins was a commissioner for negotiating and executing the treaty of Nimeguen; Sir Charles Hedges was Secretary of State; Sir George Hay was sent as a commissioner to America, during the first American war: the present Sir John Nicholl has been in

public situations; he was employed in the year 1794, for the adjustment of the American claims, and subsequently in a commission of a public nature, with regard to settling or revising a code of laws for the Island of Jersey; Sir William Grant and Mr. Osgoode were his colleagues, and Dr. Swabey, who was a civilian, succeeded Sir John Nicholl, both as American commissioner, and as connected with the preparation of the laws for the Island of Jersey.

" 1065. Was not Sir George Lee employed also in public life? — I do not know that he was employed otherwise than as King's Advocate; he was a party to the state paper which is always spoken of with great applause throughout Europe, an answer to the Prussian memorial about the year 1756, in relation to a war of that time. I have no doubt he furnished a great deal of professional knowledge upon that occasion, but I rather believe it was as King's Advocate.

" 1066. Was not Sir George Hay also a Lord of the Admiralty? — Yes, he was a Lord of the Admiralty. In what I have said concerning the employment of civilians, I intended to apply myself to the question immediately asked me; it is by no means the fact that the services of the civilians are limited to occasions like those on which they have been thus specially employed; there are multitudes of occasions, arising almost every day, in war time at least, and very many that arise in peace, where civilians are employed and where the Government could not well proceed without them. I have myself attended with Dr. Lushington, where the Government have been under difficulties in preparing public despatches in relation to a question which did arise. The Americans claimed a right to navigate through that part of the river St. Lawrence that runs between the territories claimed and occupied by Great Britain. This was a question in which the peculiar knowledge of civilians made them efficient, and where the Government could not very well prepare their state papers without them. Other questions of the same kind relating to the fisheries I know to have arisen, because Mr. Goulburn, when Under-Secretary of State, sent me the papers, and consulted me about the sort of despatch the Government should send in answer to the Americans claiming to fish on the coasts of Newfoundland. Other questions occasion-

ally arise in regard to violation of territory, by approaches to the coast, and as to rights in rivers and harbours; Government would be under a very great difficulty, if they attempted to draw despatches on matters of that sort without the advice of civilians.

"1067. In a national point of view you consider it very important to keep up a bar of civilians? — It is so important, that I think the Government would get into inextricable difficulties without such a bar, even to the danger of hostilities with foreign powers. Information on such points is necessary, and information gained professionally. The Committee are perfectly aware that very recently there has been a question with respect to the Dutch embargo, which did not end in hostilities: that is a question of public law, and what shall constitute a breach of it; this would require the aid of civilians. Questions that arise on board ships in the British navy, and other questions that arise in the mercantile navy; in these questions foreigners may, more or less, intermix themselves, and foreign territories may be involved in them: those are all questions to which the learning of civilians is exceedingly applicable. So far I have confined myself to foreign matters, but the importance of that profession is not confined to foreign matters.

"1070. Is not the law of nations a part of the diplomatic education of every other country except this? — I believe it is, to a much greater extent than it is in this country. I have seen in the conferences I have had with Ministers, that they were but little acquainted with it; I speak of men of very considerable talent; in short, it is not the habit of statesmen in England to furnish themselves with accurate information upon those points.

"1071. Among foreign diplomatists, you never perceived any want of information on this subject? — I certainly perceived a much greater degree of it than I found among our own statesmen and diplomatists; it is in a great measure from the efforts of foreign jurists, that I can infer the absolute necessity of having some class of persons in this country who professionally study the same subjects, in order to enable the Government either to answer publications abroad, or to frame state papers; and I wish the Committee to consider to what a state the Government would be reduced, if

Ministers were obliged to furnish for themselves such answers, or to frame such papers.

"1072. Will you have the goodness to state your idea of the importance of a bar of civilians in a time of peace? — That arises in almost all questions, or at least in very many questions, of the most important kind. With respect to the Church, the canon law, as studied professionally in Doctors' Commons, is that on which all the relations between the superior and inferior clergy, and between the clergy and the laity, in very many instances depend; it is the foundation of the ecclesiastical law on such subjects; and Government would be troubled with many questions of that sort, and would find it very difficult to answer them, unless they had persons at hand professionally acquainted with those subjects. The whole law that relates to the relation of marriage is another domestic consideration, and very important questions certainly have arisen, in the memory of gentlemen here, connected even with marriages in the Royal Family, and such may arise again, in which it is material to have the best professional assistance. I recollect more instances than one of marriages in the Royal Family, where civilians have been consulted with great advantage, and where common lawyers could not have been consulted with equal advantage, though I have the utmost respect for their judgment on all points determinable in the ordinary courts of law. The Government would have found themselves very inadequate to deal with those subjects without the assistance of civilians. There is a vast deal that arises in time of peace, not only in relation to foreigners, but with relation to our own subjects on board the merchant ships of Great Britain. There is a necessity for persons conversant with questions too numerous to be specified, not triable at common law, as arising out of the body of a county. It is a material to the ordinary discipline of the merchant seamen, that there should be a jurisdiction to which they are amenable at all times."

Evidence of Mr. John Batson, Surveyor.

"1. You are a surveyor?—Yes.

"2. Have you surveyed the Prerogative Office in Doctors' Commons?—I have.

"3. Do you know the room in which the original wills are kept?—Yes; it is inclosed with an iron door.

"4. How is it warmed?—It is warmed by flues from underneath.

"5. What is the floor made of?—Stone.

"6. Is it considered that the present strong room is secured from fire?—Perfectly so.

"7. Have you examined it?—I have.

"8. Are you aware that at the back of the strong room there is a wheelwright's yard?—I am.

"9. Against the wall, or resting upon the wall of the strong room, is a shed, under which large quantities of wood are occasionally deposited?—That is resting against their own wall—there is a wall abutting against that which is shown in the plan. [See the plan referred to by the last witness, Appendix (D) No. 1.]

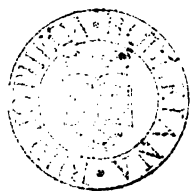
"10. Suppose a fire to occur in that yard, and this wood to be ignited, should you apprehend any danger to the strong room from the action of the fire?—Not the least.

"11. What is the thickness of the wall of the strong room itself?—Three bricks thick itself; then there is a thickness of slate of about three-quarters of an inch inside; it is lined with slate.

"12. Is there any apprehension that by the force of fire the wall itself might be so heated, and the slate, as that, though there might not be actual flame, the original wills within might be in danger of being scorched, or reduced to tinder?—It is not possible.

"Is there any space between the wall and the wheelwright's yard and that of the room?—There is in part; the wall of the wheelwright's yard is two bricks, or eighteen inches thick.

"14. Of what is the roof of the strong room made?—It is turned with groins — arched brickwork partition to carry it off, and the whole of that covered with slate. There is no combustible matter at all in the roof; the thickness of the groins is about seven or eight inches through. Then there is the slate. The slates are from five-eighths to three-fourths of an inch thick; there is no timber at all in the roof."



THE END.

LONDON:
SPOTTISWOODES and SHAW,
New-street-Square.